FLYNN, C. J., concurring in result. I respectfully write separately because although I concur with the holding of the majority that the motion for summary judgment should not have been granted at this time and would reverse the judgment of the trial court, I first would order further briefing on the applicability of the Landlord Tenant Act, General Statutes § 47a-1 et seq., which appears to be the law to govern this residential landlord tenant case.

Although the plaintiff, Shirley A. Baldwin, claimed that the duty of her landlord was mandatory and nondelegable, she cited no statutory authority for that proposition. It is not disputed in this case that the plaintiff was a residential tenant of the defendant, Ann S. Curtis. Although the parties have not briefed the applicability of the Landlord Tenant Act, subsection (e) of § 47a-1 of that act defines an owner of real property, subject to the mandates of its provisions, to include any one or more persons in whom legal title to a property is vested. See General Statutes § 47a-1 (e). It defines a landlord in relevant part as "the owner . . . of the dwelling unit, the building of which it is a part or the premises." General Statutes § 47a-1 (d). Premises are defined as "a dwelling unit and the structure of which it is a part and facilities and appurtenances therein and grounds, areas and facilities held out for the use of tenants generally or whose use is promised to the tenant." General Statutes § 47a-1 (g). General Statutes § 47a-7 of the act sets forth the responsibilities of a residential landlord. Subsection (a) states a landlord's responsibility in mandatory terms, and it specifically requires, among several other things, that a landlord keep all common areas in a clean and safe condition. General Statutes § 47a-7 (a) (3). It says nothing that would limit that responsibility to those landlords who are in possession and control of the premises.

The landlord defendant in this case claimed entitlement to summary judgment on the theory that she could not be held liable for the plaintiff's fall on icy pavement because she had arranged with another of her tenants, from a neighboring property, to clear the common parking areas where the plaintiff fell. She reasoned, therefore, that she was not in possession and control of the parking area. The plaintiff opposed the granting of the motion for summary judgment on the ground that the landlord's duty to the plaintiff was mandatory and nondelegable. She did not cite the Landlord Tenant Act as authority for her position, however.

Section 47a-7 (d) appears to provide expressly that a residential landlord can contract with another tenant to provide maintenance of the premises but only if "the agreement does not diminish or affect the obligation of

the landlord to other tenants in the premises." General Statutes § 47a-7 (d) (4).[1] Although on appeal we have plenary power to determine whether a party was entitled to judgment as a matter of law, mindful of the *Granby Holdings, Inc.*, case,[2] I would order the parties to brief what I consider to be substantial questions, namely the applicability of the Landlord Tenant Act and whether control is a material issue affecting the duty of the landlord to the tenant under the facts and circumstances of this case.

Our Supreme Court has ordered further briefing, sua sponte, on legal issues before it. It also has instructed that "[i]t is plain error for a trial court to fail to apply an applicable statute, even in the absence of the statute having been brought to its attention by the parties." *Genovese* v. *Gallo Wine Merchants, Inc.*, 226 Conn. 475, 480 n.6, 628 A.2d 946 (1993) (sua sponte ordering supplemental briefing on applicability of statute not considered by trial court or parties and ultimately deciding appeal on that basis); see also *Location Realty, Inc.* v. *General Financial Services, Inc.*, 273 Conn. 766, 771 and n.8, 873 A.2d 163 (2005) (ordering supplemental briefings and considering application of statute not raised before trial court); *Pelletier* v. *Sordoni/Skanska Construction Co.*, 264 Conn. 509, 517 n.5, 825 A.2d 72 (2003) ("although the parties did not refer the trial court to the significance of General Statutes § 31-291, we consider it in the context of the present appeal because . . . that statute is central to the question of [the defendant's] potential common-law liability to the plaintiff for negligence").

[1] General Statutes § 47a-7 (d) provides: "The landlord and tenant of a dwelling unit other than a single-family residence may agree that the tenant is to perform specified repairs, maintenance tasks, alterations or remodeling if (1) the agreement of the parties is entered into in good faith; (2) the agreement is in writing; (3) the work is not necessary to cure noncompliance with subdivisions (1) and (2) of subsection (a) of this section; and (4) the agreement does not diminish or affect the obligation of the landlord to other tenants in the premises."

[2] See *Lynch* v. *Granby Holdings, Inc.*, 230 Conn. 95, 98–99, 644 A.2d 325 (1994).